

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3748 of 1996 with  
Cri.Misc.Appln.Nos.3749/96,3857/96,3858/96,  
3859/96, 3860/96 and 3861/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DINESH R SHAH

Versus

RAMESH PUNJABHAI PATEL

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Appearance:

MR MJ PARIKH for Petitioner in all matters  
Mr. Y.F.Mehta, A.P.P. in all matters.

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 18/10/96

ORAL JUDGEMENT

In all these petitions, the petitioner is one and the same viz. Dinesh R.Shah one of the directors of Jechins Pharmaceuticals Ltd. Respondent no.1 in all these petitions is one and the same viz. Rameshbhai

Punjabhai Patel, Manager, Snehal Printing Bureau which is also a Private Limited Company. The petitioner in all these petitions is seeking to quash all the prosecutions launched against him in response to private complaints registered against him vide Criminal Cases Nos.244/91,245/91,246/91,247/91,285/91, 316/91 and 317/91 under sections 138 of the Negotiable Instruments Act(hereinafter referred to as the Act) in the court of the learned JMFC, Baroda. The facts in all these petitions are one and the same and therefore, I proceed to dispose of all these petitions by this common judgment.

2. Rule was issued, but none has appeared on behalf of the the respondent no.1 in Cri. Misc. Appln.No. 3748/96 and 3749/96. Respondent no.1 has also not put any appearance as regards Cr.Misc. Appln.Nos.3857/96 to 3861/96 and I am issuing Rule today in these matters also and I proceed to decide the said applications also in view of the fact that question of law involved in all these petitions is one and the same and the facts involved in all these petitions are exactly similar.

3. It is the case of respondent no.1 in his complaint that the complainant's company is doing the business of printing the cartons, coloured labels, leaflets and pamphlets etc. and the accused no.1 company Jechins Pharmaceuticals Ltd. had booked orders for printing of various materials from time to time and towards the bill for the said printing, seven cheques were issued by the accused no.1 company in favour of the company of the complainant. But when the complainant had presented the said cheques for encashment to his banker, said cheques were returned with endorsement that the account was closed. Thereafter, statutory notice under section 138 of the said Act was issued to the respondent no.1 company and though the respondent no.1 has received the said statutory notice had not made payment of the said cheques within the statutory period prescribed under section 138 of the Act and therefore, these complaints are launched by respondent no.1 as manager of his company against the present petitioner and others. In all the complaints, the complainant has alleged as under:

"The accused no.1 is the Public Limited Company, registered under the Companies Act, 1956, having its registered office at the above mentioned place. The accused no.2 is the administrative manager and the accused no.1 does his business through accused no.2. The accused no.3 is the Chairman and Managing Director of accused no.1

and accused no.4 to 9 are the Directors of accused no.1"

Present petitioner is accused no.7 in all the complaints and in all the complaints the above averments are made by the complainant while prosecuting the present petitioner and other directors. The petitioner has come before this court for the purpose of quashing the prosecutions and discharging the order of issue of process. It is not the duty of the court to find out as to whether the accused will be ultimately convicted or acquitted. However, at this stage, the court has to determine whether there are sufficient ground to proceed further or not. However, a bare perusal of the complainant's averment in respect of the alleged offence are taken at their face value makes out no case against the accused or the complaint does not disclose essential ingredient which is alleged against the accused, then the prosecution could be quashed by exercise of the powers u/s 482 Cr.P.C. I have already quoted above the averments made by the complainant in the complaint while making the present petitioner as an accused in the said case. From the said averments, it would be quite clear that present petitioner has been made an accused in this case merely because the accused happens to be one of the directors of the said company. It is very pertinent to note that the complainant has nowhere alleged in his complaint that the accused no.7-the petitioner before me is in actual management of the business of the accused no.1 company. It is not the claim of the complainant that petitioner-accused no.7 was conducting the business of the company. When the complainant does not allege in his complaint that the accused-petitioner was responsible to the company for the conduct of the business or that he was incharge of the business of the company or that he was looking after the day to day affairs of the company, merely because the accused petitioner being the director of the company the complainant would not be justified in naming him as an accused in the case.

In the case of Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & ors. reported in AIR SC 1983 page 67, the Apex Court has considered the question of lodging complaint against the company, its directors and manager. In this case it has been observed in paras 10 and 15 as under:

" It is therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no

offence is constituted. In other words, the test is that taking the allegations and the complaint as they are without adding or subtracting anything, if an offence is made out then the High Court will exercise of its powers under section 482 of the present Code"

" So far as the manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of loan offence under the Act. So far as the directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the agreement of the High Court that no case against the Directors (accused nos. 4 to 7) has been made out ex-facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

In the case before the Apex Court, the director and the manager had initially approached the High Court of Delhi and the prosecutions launched against them were quashed and against the quashing order of the High Court, the matter reached before the Apex Court and the Apex Court had confirmed the view of the High Court as regards the directors by making the above observations and has set aside the quashing of the proceedings against the manager. Said case of the Apex Court is applicable on all fours to the facts of the present case. In the present case, there is not a single averment made by the complainant respondent no.1 in the complaint to hold that in view of the said averments the petitioner-accused will have to go before the Trial Court. Merely because the petitioner-accused happens to be the director, even taking into consideration of the provisions of section 141 of the said Act, the prosecution launched against the petitioner-accused will have to be quashed. The view taken by me is also taken by this court (B.C.Patel.J) in the earlier decision in Cri. Misc. Appln.No. 601/91 to 603/91 and 606/91 and 705/91 and 706/91 on 27.12.93. Thus I hold that in view of the averments made in the complaint itself, the order of issue of process against

the petitioner-original accused no.7 is not justified and therefore, the petitions will have to be allowed and the order of issue of process against the petitioner in cri.case nos. 244/91 to 247/91 and 285/91,316/91 and 317/91 will have to be quashed. Thus the Cri. Misc. Application Nos.3748/96, 3749/96, ,3857/96, 3858/96, 3859/96, 3860/96 and 3861/96 and allowed and the order of issue of process passed against the present petitioner-original accused no.7 viz. D.R.Shah in cri. case nos. 244/91 to 247/91 and 285,91, 316/91 and 317/91 on the file of JMFC, Baroda respectively is hereby quashed and set aside. Rule made absolute accordingly in all matters.

(S.D.Pandit.J)